IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

CENTRAL EXCISE APPEAL NO.137 OF 2007

The Commissioner of Central Excise .. Appellant.
Versus
Shri J.K. Saboo .. Respondent.

CENTRAL EXCISE APPEAL NO.138 OF 2007

The Commissioner of Central Excise .. Appellant.
Versus
M/s.Mysore Petrochemicals Ltd., .. Respondent.

CENTRAL EXCISE APPEAL NO.139 OF 2007

The Commissioner of Central Excise .. Appellant.
Versus
M/s.I.G. Petrochemicals Ltd., .. Respondent.

Mr.A.S. Rao with Ms.Heena P. Shah & Mr.H.P. Chaturvedi
Mr.J.J. Bhat, senior counsel with Ms.Shweta Jayakar i/by Khaitan & Jayakar for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 12TH OCTOBER, 2007.

P.C. :

1. On behalf of the respondents, it is contended that considering the language of Section 35G of the Central Excise Act, 1944 as the penalty is incidental to fixation of rate of duty, the appeals would not be maintainable before this Court but before the Hon’ble Supreme Court.

. Section 35G(1) reads as under :

> "35G. Appeal to High Court. - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day

> of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law."

. A reading, therefore, of the sub-section would indicate that an appeal from order passed by the Appellate Tribunal not being an order among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment, would lie to the High Court.

. Section 35L(2) reads as under :-

> "35L. Appeal to Supreme Court. - An appeal shall lie to the Supreme Court from -
>
> (a) ---------
>
> (b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment."

. The said sub-section sets out that an appeal against the order among other things, to the determination of any question having relation to the rate of duty of excise or value of goods for the purposes of assessment, would lie to the Supreme Court. If we peruse the language of Section 35L(b), it would be clear that it applies to any order passed among other things, to the determination of

any question relating to rate of duty and appeal against such order would lie before the Supreme Court.

3. In the instant case, the Tribunal has passed an order in the matter of determination of rate of duty. On such determination of the rate of duty and considering the violation, penalty has been imposed. In other words, penalty is only incidental to determination of the main question, namely rate of duty.

. Considering that the question to be decided is the rate of duty and the issue of penalty is incidental, in our opinion, these three appeals filed by the revenue before this Court would not be maintainable as the appeals have to be filed before the Supreme Court.

4. We may also point out that appeals filed by the assessee from the order of Customs / Central Excise authorities, we have passed an order today that these appeals would not be maintainable before this Court, considering that they relates to rate of duty.

5. Considering that the appeals as filed would not lie before this Court. Hence, all the appeals

are dismissed.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)